



राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, बुधवार, १८ जून, १९९७/२८ ज्येष्ठ, १९१९

HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

NOTIFICATION

Shimla, the 4/10th June, 1997

No. HHC/Rules/(C.P.C.)6/96-9927.—In exercise of the powers vested in them by Section 23 of the State of Himachal Pradesh Act, 1970 read with Section 122 of the Code of the Civil Procedure, 1908 (As amended by Act No. 104 of 1976) and in exercise of all other powers enabling them in this behalf, the Hon'ble the Chief Justice and Judges of the High Court of Himachal Pradesh propose to make the enclosed amendment in the FIRST SCHEDULE of the Code of Civil Procedure, 1908. The draft amendment is hereby published for the information of the persons likely to be affected thereby and a notice is hereby given that the aforesaid draft amendment will be taken up for final consideration after 30 days from the date of its publication in the H. P. Rajpatra.

If any person affected thereby desires to make any objection or has any suggestion to make regarding the draft amendment, he can send the same to the Secretary, Rule Committee, High Court of Himachal Pradesh, Shimla before the expiry of the above period. The objections or suggestions, if any, so received within the period specified above will be taken into consideration before the finalisation of the draft amendment.

BY ORDER OF THE COURT

M. R. VERMA,
Registrar.

DRAFT AMENDMENT

In exercise of the powers conferred under Sections 122 and 126 of Civil Procedure Code, the High Court of Himachal Pradesh, with previous approval of the Governments of Himachal Pradesh, is pleased to make the following amendment in 'THE FIRST SCHEDULE' to the Code of Civil Procedure :—

1. These amendments may be called the "Code of Civil Procedure (Second Amendment) Himachal Pradesh, 1997."

2. It shall come into force immediately on its publication in the official gazette.

3. In ORDER 1 rule 10, Code of Civil Procedure, the following sub-rule (6) shall be added:—

"(6) The Court may, at any stage of the proceedings, on the application of any party and after notice to the other party affected by the application and on such terms as may appear to be Court to be just transpose a plaintiff to the position of a defendant, or subject to the provisions of sub-rule (3), a defendant to the position of a plaintiff."

4. The existing sub-rule (1) of ORDER-IV, Code of Civil Procedure, shall be substituted by the following :—

"1. (1) Every suit shall be instituted by presenting to the Court or such officer as it appoints in this behalf, a plaint, together with as many true copies of the plaint as there are defendants, for service with the summons upon each defendant unless the Court, for good cause shown, allows time for filing such copies."

5. The existing sub-rule (2) will be re-numbered as sub-rule (3). The following shall be inserted as sub-rule (2) :—

"(2) The plaintiff shall file alongwith the plaint, for each of the defendants a prepaid registered A. D. cover with complete and correct address of each of the defendants written on them alongwith the prescribed process-fee."

6. The following shall be added as rule 31 and 32 after rule 30 ORDER-V, Code of Civil Procedure :—

"31 (1) The Court may, on the application of the plaintiff and on such terms as to security or otherwise as the Court thinks fit, dispense with the service of summons on a defendant who is resident in a territory belonging to or occupied by a State at war with India :

Provided that an order dispensing with service of summons shall not be made unless the Court is satisfied that the defendant is resident in such territory and that service of summons on him in the mode prescribed by the Code is not possible.

(2) The Court may before making the said order direct such publication of the application as it considers necessary in the circumstances.

- (3) Where in any suit an order dispensing with service of summons on a defendant is made under this rule, and degree or order is passed against him, the Court may on his application and on such terms as may be just, set aside such decree or order and appoint a day for proceeding with the Suit.
- (4) The provisions of the first proviso to rule 13 of ORDER-IX, Code of Civil Procedure and the provisions of rule 14 of the said ORDER shall apply to an order setting aside a decree or order under sub-rule (3).
- (5) The application under sub-rule (3) shall be filed within one year from the date of cessation of hostilities with the said State.
- (6) The provisions of Section 5 of the Indian Limitation Act shall apply to application under sub-rule (3).
- (7) The provisions of this rule shall apply *mutatis mutandis* to a respondent in an appeal or a revision petition, who is resident in such territory as is referred to in sub-rule (1)."

"32. Unless the Court otherwise directs, notice of an inter-locutory application in the suit need not be served on a party who having been duly served with summons in the main suit has failed to appear and has been declared *ex parte* by the Court."

7. Sub-rule 4 to rule 2 of ORDER-VI, Code of Civil Procedure shall be added as under :—

"4. The plaintiff shall state in a separate paragraph that to the best of his knowledge and information no suit between the same parties for the same cause of action and relief is pending in any Court."

8. Existing rule 3 of ORDER-VII, Code of Civil Procedure shall be renumbered as rule 3(1) and sub-rule (2) shall be added as follows :—

"(2) Where the suit is for a specific plot with definite boundaries, it shall also be accompanied by a map, drawn to scale, showing clearly the specific plot claimed or in relation to which the decree is to be made, and so much of the fields adjoining it, also drawn to scale, as may be sufficient to facilitate identification. The specific plot and adjoining fields shall be numbered in accordance with the statement and the map shall be certified as correct by the person who prepared it. Where, however, the suit is for the whole of one or more khasra numbers as shown in the settlement map or a share in such numbers, and not for a specific portion thereof, no map will be required unless it is necessary for other reasons to show the boundaries of such khasra numbers."

9. The proviso to rule 4(1) of ORDER-XIII, Code of Civil Procedure, shall be added as follows :—

"Provided that where the Court is satisfied that the document has not been endorsed in the manner laid down in the rules aforesaid and the same was admitted in evidence, such documents shall be treated as having been properly admitted in evidence unless non-compliance of this rule has resulted in mis-carriage of justice."

10. The existing Rule 85 of ORDER-XXI, Code of Civil Procedure shall be substituted by the following :—

“85. *Time for payment in full of purchase moneys.*—The full amount of purchase money payable, together with the amount required for the general stamp paper for the certificate under rule 94, shall be paid by the purchaser into Court before the Court closes on the 15th day from the date of the sale of the property:

Provided that in respect of the purchase money the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72:

Provided further that if as a result of some bonafide mistake or miscalculation, the amount deposited falls short of the full amount of the purchase money, the Court may in its discretion, allow the shortfall to be made good after fifteen days of the sale and if the full amount of the purchase money is deposited within such time as the Court may allow, the Court may condone the delay, if it considers it just and proper to do so.”

11. The existing Rule 17 of ORDER XLI, Code of Civil Procedure shall be substituted by the following :—

“17. *Disposal of appeal where the parties or either of them fails to appear.*—Where on the day fixed, or on any other day to which hearing may be adjourned, the parties to the appeal or either of them do not appear when the appeal is called on for hearing, the Court may adjourn the appeal for a day to be fixed by it with a specific order that on the adjourned date the Court will dispose of the appeal after perusal of records. The Court shall on such adjourned date dispose of the appeal on merits after perusal of records :

Provided that in case the parties or either of them appear on the day so fixed and are prepared to address arguments, they shall be heard before deciding the appeal on merits.”

BY ORDER OF THE HON'BLE CHIEF JUSTICE
AND HON'BLE JUDGES.

M. R. VERMA,
Registrar.